

**Ng Chin Siu & Sons Rubber Estate Sdn. Bhd. v.
Datuk Bandar, Kuala Lumpur**

[1994] 1 CLJ

Wan Adnan bin Ismail J.

283

as near as possible to the position he was in before the accident and not entitle him to profit from a misfortune.

Plaintiff's Counsel had agreed that it is the duty of the Court to ensure that the plaintiff is not put out of pocket by the defendant's negligence. Therefore the plaintiff is in no way prejudiced or put out of pocket if he is compensated for according to the exchange rate in October 1982 as this would precisely be the expenses incurred at the material time. The question begs to be asked whether the plaintiff would seek to recover as per the exchange rate at the date of trial if the same had depreciated in value. I will therefore hold that the exchange rate applicable here would be the one prevailing in October 1982.

Based on the above reasons, I order judgment for the plaintiff as follows:

- (a) Agreed damages for repairs, towing and adjusters report in Malaysian currency based on the exchange rate in October 1982.
- (b) Loss of use for 48 days at S\$800 per day in Malaysian Currency based on the exchange rate in October 1982.
- (c) costs to be taxed.
- (d) Interest at 3% per annum on the above total from date of accident 24 October 1982 to 15 March 1993 and thereafter at 8% per annum until date of realisation.

**a NG CHIN SIU & SONS RUBBER
ESTATE SDN. BHD.**

v.

DATUK BANDAR, KUALA LUMPUR

**b HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING MOTION NO. R2-25-67-92]
7 AUGUST 1993**

**c LOCAL GOVERNMENT: Assessment of annual
value of land - Local Government Act 1976, s. 2(c)
- Assessment based on finding that land was a
vacant land - Land planted with old and un-
tapped rubber trees - Whether land a vacant land
- Whether finding and assessment proper - Local
Government Act 1976, ss. 2(c)(ii), 143, 145.**

d The respondent made an assessment on the annual value of the appellant's land under the Local Government Act 1976. At the time the assessment was made the land was planted with old and untapped rubber trees. Based on the observation that the land was left idle and somewhat abandoned, the respondent made a finding that the land was a vacant land thereby subjecting the property to a valuation under s. 2(c)(ii) of the Act which prescribed that the assessment of such land was to be calculated at an amount equivalent to 10% of the market value of the land. Accordingly the respondent assessed the value at RM 2,994,000. The appellant appealed against the assessment and contended that the valuation was improperly made as the land was not a vacant land.

e The issue before the court was whether the respondent was correct in regarding the said land as a vacant land.

Held:

g At the material date the land in question was planted with rubber trees. As the said land was being used as a rubber land, it cannot be regarded as vacant under proviso (c) of s. 2 of the Act. The annual value therefore should be the estimated gross annual rent the said land might reasonably be expected to let from year to year.

h [Appeal allowed].

Cases referred to:

KShoe Shops Ltd. v. Hardy (Valuation Officer) & Ors. [1983] Vol. 3 All ER 609 (refd)
Kuala Lumpur v. Bukit Jalil Estates Sdn. Bhd. [1988] 2 MLJ 179 (refd)

i Legislation referred to:

Local Government Act 1976, ss. 2(c)(ii), 142, 143(1), 145

For the appellant - J. Kannaperan; M/s. Shearn Delamore & Co.

For the respondent - N. Balan; M/s. Shook Lin & Bok

[Ed. Note: The respondents have appealed to the Supreme Court vide Civil Appeal No. 02-360-93].

JUDGMENT

Wan Adnan bin Ismail J:

This is an appeal under s. 145 of the Local Government Act 1976 (the Act) against the decision of the respondent whereby the annual value of the land held under Grant No. 4835 Lot 826 Mukim Batu, District Wilayah Persekutuan (the said land) was assessed at the total sum of RM2,994,000.

The appellant is the registered proprietor of the said land which is 199.61 acres in area. The category of land use of the said land is agriculture.

On 18 November 1991 the respondent issued the notice "MENYEMAK SEMULA SENARAI NILAIAN" revising the Annual Valuation List for 1991 of the said land to RM2,994,000. The notice also said:

Adalah dengan ini diberitahu bahawa Datuk Bandar, Dewan Bandaraya Kuala Lumpur akan menyemak semula Senarai Nilai 1991 bagi pegangan hartanah yang tersebut di bawah ini **pada 31 Disember 1991 dan akan dikuatkuasakan pada 1 haribulan Januari 1992.**

(Emphasis is added).

In accordance with s. 142 of the Act the appellant made objections to the annual value suggested. The objections were heard on 3 June 1992. By letter dated 27 June 1992 the appellant was informed that the respondent had not accepted the objections raised and that the annual value of the said land would remain at RM2,994,000.

Puan Soliha bt. Ahmad Nasarudin the Valuation Officer of the respondent in her affidavit affirmed on 21 January 1993 *inter-alia* said:

6. I wish to state that I inspected the subject property and came to the conclusion the property was vacant land for the purposes of determining its annual value under the Local Government Act 1976. The following factors were taken into account in reaching my conclusion that the subject property is vacant land:

- (a) The subject property was/is not habited.
- (b) The workers' quarters were/are abandoned and dilapidated.

- a (c) The subject property consisted of very old rubber trees which were beyond their economic life.
- (d) There were no physical signs of tapping of the rubber trees.

- b 7. Taking into account the above factors, I verily believe that the land is to be considered as vacant land and hence its annual value is to be assessed under s. 2(c)(ii) of the Local Government Act 1976 (ACT 171).

Section 2(c)(ii) of the Act provides:

- c "Annual value" means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes.

Provided that -

- d (a) ...
- (b) ...
- (c) in the case of any land -
 - (i) ...
 - (ii) which is vacant, unoccupied or not built upon;
 - (iii) ...
 - (iv) ...

- e the annual value shall be, in the case of subparagraph (i), either the annual value as hereinbefore defined or ten per centum of the open market value thereof at the absolute discretion of the valuation officer, and in the case of subparagraphs (ii), (iii) and (iv) the annual value shall be ten per centum of the open market value thereof as if, in relation to subparagraphs (iii) and (iv), it were vacant land with no buildings thereon and in all cases the local authority may, with the approval of the State Authority, reduce such percentages to a minimum of five per centum;

- f The question is whether the respondent was correct in regarding the said land as a vacant land.

- g According to the appellant the said land is used as a rubber estate and the entire land has rubber trees planted on it. The tapping of the rubber trees had been contracted to a contractor named Mr. Kong Fatt Cheong for tapping on an annual basis. The rent payable by the said contractor had been agreed at RM1,000 per month and in addition to the monthly rent, the Contractor also paid a price incentive. As proof of the arrangement Mr. Ng Beh Tong the appellant's Director and General Manager produced the written contracts for the years 1990, 1991 and

i

1992 by his affidavit affirmed on 9 July 1992. The last contract dated 1 January 1992 was for the period up to 30 June 1992. Mr. Ng also stated in the affidavit that the rubber trees on the said land continued to be tapped and the land had never been vacant. The profit and loss account of the estate for years ending 31 December 1989, 1990 and 1991 were also exhibited to his affidavit. The account shows there was rubber production in 1991. Also attached to the affidavit was the valuation report on the said land by M/s. United Pacific Property Consultants Sdn. Bhd. dated 28 May 1992. The valuation report *inter alia* stated that the rubber trees were being tapped. The valuation report was made by Mr. Cheah Teow Keat, a Chartered Surveyor, the Managing Director of the firm.

The appellant's tapping contractor Mr. Kong Fatt Cheong in his affidavit affirmed on 26 May 1993 stated that he commenced working as the appellant's tapping contractor in September 1980. He said tapping continued till June 1992. He himself arranged for the sale of rubber tapped on the said land for the period from January to June 1992. He produced six receipts for the sale of rubber to Kilang Getah MRDC. He said he was forced to cease all tapping on 30 June 1992 because there was no labour, but he hoped to resume tapping as soon as he could get a work force.

It must first be determined what should be the appropriate date for the valuation of the said land.

Section 143(1) of the Act provides:

143(1) On or before the 31 December of the year preceding the year in which any valuation list is to come into force the local authority shall, with the approval of the State Authority, confirm such valuation list with or without any amendment or revision and the valuation list so confirmed shall be deemed to be the valuation list until such time as it is superseded by another valuation list.

The said land was valued for the valuation list which was to come into force on 1 January 1992. This means that the valuation date must be 31 December 1991. (See *K Shoe Shops Ltd. v. Hardy (Valuation Officer) and Ors.* [1983] Vol. 3 All ER 609. This follows that for the purpose of the definition of "Annual Value" in s. 2 proviso (c)(ii), whether or not the said land was vacant must be decided on the situation as at 31 December 1991.

a It is not disputed that the category of land use of the said land is agriculture. It cannot be denied that the said land is planted with rubber trees. According to the appellant the trees were planted in 1953, 1954 and 1955. This is confirmed by the report of the officers from the Rubber Research Institute of Malaysia when they visited the said land on 23 February 1993 at the request of the respondent (the RRIM report). However, the respondent's valuation officer Soliha Bte Ahmad Nasarudin in her affidavit affirmed on 21 January 1993 described the said land as follows:

c ...I found that the subject property was in fact in an abandoned state. The land was covered with bushes and shrubs. I saw no visible signs of any rubber cultivations.

d In her affidavit affirmed on 22 January 1993 she exhibited three photographs (Photo A3, A5 and A6) which she said she took on 15 January 1993 to show the condition of the said land. Looking at the photographs one would agree with her that the said land was covered with bushes and shrubs.

e The appellant's consultant in another report dated 10 February 1993 attached to the affidavit of Ng Beh Tong affirmed on 26 May 1993 exhibited 4 large photographs to show the condition of the said land. These photographs show the said land being planted with rubber trees. These photographs were in great contrast to the photographs taken by Soliha. The consultant said in the report:

f We firmly believe that the respondent may have inspected the wrong property or had not inspected the property properly when she described in para 8 of her affidavit that "The land was covered with bushes and shrubs. I saw no visible signs of any rubber cultivation.

g I find that Soliha had not given a correct description of the said land. The photographs she produced were misleading. I accept the finding of the appellant's consultant as the correct description of the said land when he said:

h Although the estate is somewhat neglected it is nevertheless still largely planted with old rubber trees.

i Soliha also said there were no physical signs of tapping of the rubber trees. As stated earlier the appellant had contracted to the contractor Mr. Kong Fatt Cheong to tap the trees. The contracts for the years 1990, 1991 and 1992 were pro-

duced as evidence. The contractor himself swore an affidavit to that effect and also said that the tapping only stopped in June 1992 due to lack of labour. Receipts for the sale of rubber between January to June 1992 were produced as evidence. The profit and loss account of the estate showed that there was rubber production in 1991. These are facts sworn in affidavits by the appellant's director Mr. Ng Beh Tong and Mr. Kong Fatt Cheong the appellant's tapping contractor. The Counsel for the respondent chose not to cross-examine them on their affidavits.

According to the RRIM report the RRIM officers said there were no fresh tapping cuts on the tapping panel of the trees. This report does not help the respondent because the visit was made on 23 February 1993. Tapping had already stopped since June 1992. The report also said that the trees could still be tapped though the yield would be low. I do not think it correct to say that because the trees are old tapping is no longer economically viable. Whether or not it is economic will depend on the current market price of rubber. It is not unheard of in this country that rubber trees were left untapped when the market price was low but tapping resumed when the price increased.

On the balance of probability I find that as at 31 December 1991 the said land was planted with rubber trees. Though the trees were old they were tappable and were being tapped. As at 31 December 1991 the said land was being used as a rubber land.

Learned Counsel for the respondent submitted that the case of *Datuk Bandar, Kuala Lumpur v. Bukit Jalil Estates Sdn. Bhd.* [1988] 2 MLJ 179 had no application to this case because that case was confined to its own particular facts. There, the Court found that there was unchallenged evidence that there was economic activity of rubber tapping. I find that the said case is applicable. The difference is that in the present case it is the finding of the Court that as at 31 December 1991 there was tapping of the rubber trees planted on the said land. In the *Bukit Jalil's* case the Supreme Court held:

Since all the lots comprising the Bukit Jalil Estate are agricultural land completely occupied and not vacant, they do not come under proviso (c) irrespective of whether they are built upon, not built upon or partially built upon, and in respect of them the annual value should be the estimated gross annual rent.

a For the above reasons I hold that the said land cannot as at 31 December 1991 be regarded as vacant under proviso 'c'. The annual value should be the estimated gross annual rent at which the said land might reasonably be expected to be let from year to year. I allowed the appeal with costs and granted the order in terms of the summons.

b

c

d

e

f

g

h

i